



PATENT

#21
2-22-01

Case 803P019

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of) Examiner: M. Dastouri
Allan S. Hodgson)
Jessica M. Arnold) Group Art Unit: 2723
MEASUREMENT OF FRUIT PARTICLES)
Continued Prosecution Application))
Serial No. 08/879,322)
Filed: June 20, 1997)

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SUPPLEMENTAL
DECLARATION UNDER RULE 131

Commissioner for Patents
Washington, D.C. 20231

Sir:

We, Allan S Hodgson and Jessica M. Arnold do hereby depose and say as follows:

1. We are the declarants of the Declaration Under Rule 131, dated May 22, 2000, which is of record in the original filing of the above-identified application.

2. It is our understanding that U.S. Patent No. 5,818,953, having a filing date of April 17, 1996, of Andrew Queisser et al. (herein referred to as the '953 patent), continues to be relied upon by the Patent and Trademark Office in support of a rejection, either alone or as the primary reference of a combination, of all of the claims of the above-identified application, namely claims 1-10 and 12-20.

3. The invention disclosed and recited in rejected claims 1-10 and 12-20 of our above-identified application was made prior to April 17, 1996, the effective filing date of the '953 patent. More specifically, our invention was made and completed and actually reduced to practice, all in the United States of America, prior to April 17, 1996, as evidenced by Exhibits A, B, C, D, E and F of our prior Declaration, as well as by attached Exhibit G.

4. While the dates have been removed from Exhibit G, and this has redactions, the removed dates all are prior to April 17, 1996. In terms of time sequence, the Exhibit G is dated after Exhibit E and prior to April 17, 1996.

5. Exhibit G is a week trip report ("Friday Report") prepared by declarant Arnold in the normal course of her duties for the Assignee of the present application. This Report evidences that the invention of the present application as described in our prior Declaration was reduced to practice and demonstrated at the fruits and toppings plant of Assignee at John Street, Seattle, Washington. The audience for the demonstration included the Fruit Plant Manager (Rob), Fruit Plant Quality Assurance Manager (Kirk), Fruit Research and Development Leader (Pat), and Quality Assurance Technicians. Also present were declarants Allan S. Hodgson and Jessica M. Arnold. This reduction to practice, testing and demonstration occurred on the Thursday of this Exhibit G, which is a date before April 17, 1996.

6. The test equipment which was used by the declarants in this reduction to practice prior to April 17, 1996, which is memorialized in Exhibit G, was an apparatus for, and which carried out a method for measurement of a fruit matrix containing fruit particles (i.e. "fruit particles in a matrix," or "fruit matrix") which included: (a) a substantially opaque cabinet; (b)

the camera noted in the previously referred to Exhibits, which camera was mounted in the upper portion of this opaque cabinet; (c) a light source in this opaque cabinet (a light source was positioned in the lower portion of the cabinet and below the fruit matrix, so as to "back light" the fruit matrix so that an image was obtained in which the fruit particles of the fruit matrix were distinguishable from the background continuous phase of the fruit matrix, with the result that the fruit particles thus were measured while in the matrix and without separating them from the continuous phase of the matrix); (d) a light-passing sample tray which supported the fruit matrix during operation; and (e) a computer with image analyzing software which analyzed the computer readable image captured by the camera to obtain measurement information concerning the fruit particles of the fruit matrix.

7. The apparatus and method of our invention as summarized in this Supplemental Declaration and our prior Declaration was completed and actually reduced to practice, as shown by Exhibits A through G, before April 17, 1996. We each recall the demonstration of Exhibit G. We each recall that the details of the apparatus and method which we had reduced to practice by the time of that demonstration had the features of our claimed invention, including those specified in paragraph 6 hereof. Exhibit G, which had not been located at the time of our prior Declaration, confirmed the timing of this demonstration of the reduction to practice of our claimed invention.

8. This Supplemental Declaration, our original Declaration, and the above-identified application use terms such as "fruit particles in a matrix", "fruit matrix" and "a fruit matrix containing fruit particles". Such terms typically refer to an aqueous, jelled, liquid matrix.

9. We hereby declare that all statements made herein and of our knowledge are true and that all statements made on information and belief are believed to be true; and we further declare that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application of any patent issued therefrom.

Dated: February 7, 2001

Allan S. Hodgson ✓
Allan S. Hodgson

Dated: February 8, 2001

Jessica M. Arnold ✓
Jessica M. Arnold



Jessica M. Arnold

FRIDAY REPORT TO

Monday

Tuesday

Wednesday

Thursday

* Visited Bunge fruit plant (John St.)

★ Attended imaging system demo presentation (3:30pm to 4:00pm) — Jessica, Marco, Allan, Rob, Rick,
Kirk, Tom, Pat, 2 ladies...
★ Attended Pat Lathrop & Bill Keeney's fruit sales presentation...

Friday